

114TH CONGRESS
1ST SESSION

H. R. 1941

To improve the examination of depository institutions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2015

Mr. WESTMORELAND (for himself, Mrs. CAROLYN B. MALONEY of New York, Mr. HECK of Washington, Mr. FLEISCHMANN, Mr. COOPER, Mr. BARR, Mr. STIVERS, Mr. PITTENGER, Mr. DUFFY, Mr. COFFMAN, Mr. FINCHER, Mr. MESSER, Mr. MULVANEY, Mr. GOSAR, Mr. HILL, Mr. MURPHY of Florida, Mr. FITZPATRICK, Mr. LUCAS, Mrs. WAGNER, Mr. POSEY, Mr. DAVID SCOTT of Georgia, Mr. DESJARLAIS, Mr. WILLIAMS, Mr. DUNCAN of South Carolina, Mr. TIPTON, Mr. GARRETT, Mr. MCHENRY, Mrs. LOVE, Mr. HURT of Virginia, and Mr. KING of New York) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To improve the examination of depository institutions, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Institutions
5 Examination Fairness and Reform Act”.

1 **SEC. 2. TIMELINESS OF EXAMINATION REPORTS.**

2 The Federal Financial Institutions Examination
3 Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended
4 by adding at the end the following:

5 **“SEC. 1012. TIMELINESS OF EXAMINATION REPORTS.**

6 “(a) IN GENERAL.—

7 “(1) FINAL EXAMINATION REPORT.—A Federal
8 financial institutions regulatory agency shall provide
9 a final examination report to a financial institution
10 not later than 60 days after the later of—

11 “(A) the exit interview for an examination
12 of the institution; or

13 “(B) the provision of additional informa-
14 tion by the institution relating to the examina-
15 tion.

16 “(2) EXIT INTERVIEW.—If a financial institu-
17 tion is not subject to a resident examiner program,
18 the exit interview shall occur not later than the end
19 of the 9-month period beginning on the commence-
20 ment of the examination, except that such period
21 may be extended by the Federal financial institu-
22 tions regulatory agency by providing written notice
23 to the institution and the Independent Examination
24 Review Director describing with particularity the
25 reasons that a longer period is needed to complete
26 the examination.

1 “(b) EXAMINATION MATERIALS.—Upon the request
2 of a financial institution, the Federal financial institutions
3 regulatory agency shall include with the final report an
4 appendix listing all examination or other factual informa-
5 tion relied upon by the agency in support of a material
6 supervisory determination.”.

7 **SEC. 3. EXAMINATION STANDARDS.**

8 The Federal Financial Institutions Examination
9 Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended
10 by section 2, is further amended by adding at the end the
11 following:

12 **“SEC. 1013. EXAMINATION STANDARDS.**

13 “(a) IN GENERAL.—In the examination of a financial
14 institution—

15 “(1) a commercial loan shall not be placed in
16 non-accrual status solely because the collateral for
17 such loan has deteriorated in value;

18 “(2) a modified or restructured commercial loan
19 shall be removed from non-accrual status if the bor-
20 rower demonstrates the ability to perform on such
21 loan over a maximum period of 6 months, except
22 that with respect to loans on a quarterly, semi-
23 annual, or longer repayment schedule such period
24 shall be a maximum of 3 consecutive repayment pe-
25 riods;

1 “(3) a new appraisal on a performing commer-
2 cial loan shall not be required unless an advance of
3 new funds is involved; and

4 “(4) in classifying a commercial loan in which
5 there has been deterioration in collateral value, the
6 amount to be classified shall be the portion of the
7 deficiency relating to the decline in collateral value
8 and repayment capacity of the borrower.

9 “(b) WELL CAPITALIZED INSTITUTIONS.—The Fed-
10 eral financial institutions regulatory agencies may not re-
11 quire a financial institution that is well capitalized to raise
12 additional capital in lieu of an action prohibited under
13 subsection (a).

14 “(c) CONSISTENT LOAN CLASSIFICATIONS.—The
15 Federal financial institutions regulatory agencies shall de-
16 velop and apply identical definitions and reporting require-
17 ments for non-accrual loans.”.

18 **SEC. 4. INDEPENDENT EXAMINATION REVIEW DIRECTOR.**

19 The Federal Financial Institutions Examination
20 Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended
21 by section 3, is further amended by adding at the end the
22 following:

1 **“SEC. 1014. OFFICE OF INDEPENDENT EXAMINATION RE-**
2 **VIEW.**

3 “(a) ESTABLISHMENT.—There is established in the
4 Council an Office of Independent Examination Review
5 (the ‘Office’).

6 “(b) HEAD OF OFFICE.—There is established the po-
7 sition of the Independent Examination Review Director
8 (the ‘Director’), as the head of the Office. The Director
9 shall be appointed by the Council and shall be independent
10 from any member agency of the Council.

11 “(c) STAFFING.—The Director is authorized to hire
12 staff to support the activities of the Office.

13 “(d) DUTIES.—The Director shall—

14 “(1) receive and, at the Director’s discretion,
15 investigate complaints from financial institutions,
16 their representatives, or another entity acting on be-
17 half of such institutions, concerning examinations,
18 examination practices, or examination reports;

19 “(2) hold meetings, at least once every three
20 months and in locations designed to encourage par-
21 ticipation from all sections of the United States,
22 with financial institutions, their representatives, or
23 another entity acting on behalf of such institutions,
24 to discuss examination procedures, examination
25 practices, or examination policies;

1 “(3) review examination procedures of the Fed-
2 eral financial institutions regulatory agencies to en-
3 sure that the written examination policies of those
4 agencies are being followed in practice and adhere to
5 the standards for consistency established by the
6 Council;

7 “(4) conduct a continuing and regular review of
8 examination quality assurance for all examination
9 types conducted by the Federal financial institutions
10 regulatory agencies;

11 “(5) adjudicate any supervisory appeal initiated
12 under section 1015; and

13 “(6) report annually to the Committee on Fi-
14 nancial Services of the House of Representatives, the
15 Committee on Banking, Housing, and Urban Affairs
16 of the Senate, and the Council, on the reviews car-
17 ried out pursuant to paragraphs (3) and (4), includ-
18 ing compliance with the requirements set forth in
19 section 1012 regarding timeliness of examination re-
20 ports, and the Council’s recommendations for im-
21 provements in examination procedures, practices,
22 and policies.

23 “(e) CONFIDENTIALITY.—The Director shall keep
24 confidential all meetings with, discussions with, and infor-
25 mation provided by financial institutions.”.

1 **SEC. 5. RIGHT TO INDEPENDENT REVIEW OF MATERIAL SU-**
2 **PERVISORY DETERMINATIONS.**

3 The Federal Financial Institutions Examination
4 Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended
5 by section 4, is further amended by adding at the end the
6 following:

7 **“SEC. 1015. RIGHT TO INDEPENDENT REVIEW OF MATERIAL**
8 **SUPERVISORY DETERMINATIONS.**

9 “(a) IN GENERAL.—A financial institution shall have
10 the right to obtain an independent review of a material
11 supervisory determination contained in a final report of
12 examination.

13 “(b) NOTICE.—

14 “(1) TIMING.—A financial institution seeking
15 review of a material supervisory determination under
16 this section shall file a written notice with the Inde-
17 pendent Examination Review Director (the ‘Direc-
18 tor’) within 60 days after receiving the final report
19 of examination that is the subject of such review.

20 “(2) IDENTIFICATION OF DETERMINATION.—

21 The written notice shall identify the material super-
22 visory determination that is the subject of the inde-
23 pendent examination review, and a statement of the
24 reasons why the institution believes that the deter-
25 mination is incorrect or should otherwise be modi-
26 fied.

1 “(3) INFORMATION TO BE PROVIDED TO INSTI-
2 TUTION.—Any information relied upon by the agen-
3 cy in the final report that is not in the possession
4 of the financial institution may be requested by the
5 financial institution and shall be delivered promptly
6 by the agency to the financial institution.

7 “(c) RIGHT TO HEARING.—

8 “(1) IN GENERAL.—The Director shall deter-
9 mine the merits of the appeal on the record or, at
10 the financial institution’s election, shall refer the ap-
11 peal to an Administrative Law Judge to conduct a
12 confidential hearing pursuant to the procedures set
13 forth under sections 556 and 557 of title 5, United
14 States Code, which hearing shall take place not later
15 than 60 days after the petition for review was re-
16 ceived by the Director, and to issue a proposed deci-
17 sion to the Director based upon the record estab-
18 lished at such hearing.

19 “(2) STANDARD OF REVIEW.—In rendering a
20 determination or recommendation under this sub-
21 section, neither the Administrative Law Judge nor
22 the Director shall defer to the opinions of the exam-
23 iner or agency, but shall conduct a de novo review
24 to independently determine the appropriateness of
25 the agency’s decision based upon the relevant stat-

1 utes, regulations, and other appropriate guidance, as
2 well as evidence adduced at any hearing.

3 “(d) FINAL DECISION.—A decision by the Director
4 on an independent review under this section shall—

5 “(1) be made not later than 60 days after the
6 record has been closed; and

7 “(2) be deemed final agency action and shall
8 bind the agency whose supervisory determination
9 was the subject of the review and the financial insti-
10 tution requesting the review.

11 “(e) RIGHT TO JUDICIAL REVIEW.—A financial insti-
12 tution shall have the right to petition for review of final
13 agency action under this section by filing a Petition for
14 Review within 60 days of the Director’s decision in the
15 United States Court of Appeals for the District of Colum-
16 bia Circuit or the Circuit in which the financial institution
17 is located.

18 “(f) REPORT.—The Director shall report annually to
19 the Committee on Financial Services of the House of Rep-
20 resentatives and the Committee on Banking, Housing, and
21 Urban Affairs of the Senate on actions taken under this
22 section, including the types of issues that the Director has
23 reviewed and the results of those reviews. In no case shall
24 such a report contain information about individual finan-

1 cial institutions or any confidential or privileged informa-
2 tion shared by financial institutions.

3 “(g) RETALIATION PROHIBITED.—A Federal finan-
4 cial institutions regulatory agency may not—

5 “(1) retaliate against a financial institution, in-
6 cluding service providers, or any institution-affiliated
7 party (as defined under section 3 of the Federal De-
8 posit Insurance Act), for exercising appellate rights
9 under this section; or

10 “(2) delay or deny any agency action that
11 would benefit a financial institution or any institu-
12 tion-affiliated party on the basis that an appeal
13 under this section is pending under this section.

14 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion may be construed—

16 “(1) to affect the right of a Federal financial
17 institutions regulatory agency to take enforcement
18 or other supervisory actions related to a material su-
19 pervisory determination under review under this sec-
20 tion; or

21 “(2) to prohibit the review under this section of
22 a material supervisory determination with respect to
23 which there is an ongoing enforcement or other su-
24 pervisory action.”.

1 **SEC. 6. ADDITIONAL AMENDMENTS.**

2 (a) RIEGLE COMMUNITY DEVELOPMENT AND REGU-
3 LATORY IMPROVEMENT ACT OF 1994.—Section 309 of the
4 Riegle Community Development and Regulatory Improve-
5 ment Act of 1994 (12 U.S.C. 4806) is amended—

6 (1) in subsection (a), by inserting after “appro-
7 priate Federal banking agency” the following: “, the
8 Bureau of Consumer Financial Protection,”;

9 (2) in subsection (b)—

10 (A) in paragraph (2), by striking “the ap-
11 pellant from retaliation by agency examiners”
12 and inserting “the insured depository institu-
13 tion or insured credit union from retaliation by
14 the agencies referred to in subsection (a)”;

15 (B) by adding at the end the following
16 flush-left text:

17 “For purposes of this subsection and subsection (e), retal-
18 iation includes delaying consideration of, or withholding
19 approval of, any request, notice, or application that other-
20 wise would have been approved, but for the exercise of the
21 institution’s or credit union’s rights under this section.”;

22 (3) in subsection (e)(2)—

23 (A) in subparagraph (B), by striking
24 “and” at the end;

25 (B) in subparagraph (C), by striking the
26 period and inserting “; and”; and

1 (C) by adding at the end the following:

2 “(D) ensure that appropriate safeguards
3 exist for protecting the insured depository insti-
4 tution or insured credit union from retaliation
5 by any agency referred to in subsection (a) for
6 exercising its rights under this subsection.”;

7 and

8 (4) in subsection (f)(1)(A)—

9 (A) in clause (ii), by striking “and” at the
10 end;

11 (B) in clause (iii), by striking “and” at the
12 end; and

13 (C) by adding at the end the following:

14 “(iv) any issue specifically listed in an
15 exam report as a matter requiring atten-
16 tion by the institution’s management or
17 board of directors; and

18 “(v) any suspension or removal of an
19 institution’s status as eligible for expedited
20 processing of applications, requests, no-
21 tices, or filings on the grounds of a super-
22 visory or compliance concern, regardless of
23 whether that concern has been cited as a
24 basis for another material supervisory de-
25 termination or matter requiring attention

1 in an examination report, provided that the
2 conduct at issue did not involve violation of
3 any criminal law; and”.

4 (b) FEDERAL CREDIT UNION ACT.—Section 205(j)
5 of the Federal Credit Union Act (12 U.S.C. 1785(j)) is
6 amended by inserting “the Bureau of Consumer Financial
7 Protection,” before “the Administration” each place such
8 term appears.

9 (c) FEDERAL FINANCIAL INSTITUTIONS EXAMINA-
10 TION COUNCIL ACT OF 1978.—The Federal Financial In-
11 stitutions Examination Council Act of 1978 (12 U.S.C.
12 3301 et seq.) is amended—

13 (1) in section 1003, by amending paragraph (1)
14 to read as follows:

15 “(1) the term ‘Federal financial institutions
16 regulatory agencies’—

17 “(A) means the Office of the Comptroller
18 of the Currency, the Board of Governors of the
19 Federal Reserve System, the Federal Deposit
20 Insurance Corporation, and the National Credit
21 Union Administration; and

22 “(B) for purposes of sections 1012, 1013,
23 1014, and 1015, includes the Bureau of Con-
24 sumer Financial Protection;”; and

- 1 (2) in section 1005, by striking “One-fifth” and
- 2 inserting “One-fourth”.

○